

ORIGINAL

BEFORE THE CONTRACTORS BOARD

RECEIVED

STATE OF IDAHO

APR 23 2009

OCCUPATIONAL LICENSES

In the Matter of the Registration of:)
) Case No. CON-2009-4
MANUEL T. LOVATO,)
Registration No. RCT-16374,) **FINDINGS OF FACT,**
) **CONCLUSIONS OF LAW AND**
Respondent.) **RECOMMENDED ORDER**
)

Having reviewed the Complaint and other documents in this matter, the Hearing Officer hereby enters the following Findings of Fact, Conclusions of Law, and Recommended Order:

FINDINGS OF FACT

1. Manuel T. Lovato (hereinafter "Respondent") is registered with the Idaho State Contractors Board (hereinafter "Board") under Registration No. RCT-16374 to engage in the practice of contracting.

2. On January 26, 2009, a formal administrative Complaint was filed in this matter with the Board. Said Complaint is expressly incorporated herein and made a part hereof.

3. Copies of the Complaint, along with the Notification of Procedural Rights, were sent to Respondent on February 24, 2009, by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail. The mailings were addressed to Respondent at his most recent known addresses:

Manuel T. Lovato
197 Washington Street South
Twin Falls, ID 83301

Manuel T. Lovato
P.O. Box 1139
Twin Falls, ID 83303

4. The mailings for the P.O. Box 1139 address were returned to the sending office with the notations "unable to forward," "no forwarding order on file" and "vacant" by the post office. The certified mail addressed to 197 Washington Street South was

returned to the sending office with the notation "unclaimed" by the post office, and the envelope containing a copy of the Complaint which was sent to Respondent by regular mail to that address was not returned to the sending office.

5. The Notification of Procedural Rights informed Respondent that, under statutes and rules applicable to such proceedings before the Board, Respondent needed to file a formal Answer to the Complaint within twenty-one (21) days of service of the Complaint and that failure to timely file an Answer to the Complaint or otherwise defend against the action would constitute a default and would be sufficient grounds for proceeding administratively against Respondent's registration without the necessity of conducting a hearing.

6. On 3/31, 2009, a Notice of Proposed Default Order and Default Order, along with another copy of the Complaint and Notification of Procedural Rights, were sent to Respondent by means of the United States Mail, postage prepaid, both by certified mail, return receipt requested, and by regular mail, at the following address:

Manuel T. Lovato
197 Washington Street South
Twin Falls, ID 83301

7. Respondent failed to contest entry of the proposed Default Order within seven (7) days of service of the Notice of Proposed Default Order.

8. Concurrent herewith, a Default Order was entered against Respondent. Therefore, the allegations contained in the Complaint on file in this matter are admitted as true without the necessity of conducting a hearing.

9. As detailed in the incorporated Complaint, Respondent did do the following:

a. On or about October 1, 2007, Respondent contracted with M.M. to construct a front porch on M.M.'s residence for \$3,500, including materials and labor. M.M. paid Respondent \$2,000 as an advance for materials. Respondent tore out M.M.'s existing front steps, poured concrete for a foundation, and put up a 4x4 post and part of

the stair rails. Respondent left 21-2x4 boards and 4-4x4 posts on M.M.'s property and did not return. Respondent failed to complete the project for M.M. and/or refund to M.M. the amount owing to M.M. for the materials advance.

b. On or about September 7, 2007, Respondent contracted with M.L. and S.L. to re-roof their residence with a metal roof, enclose the front porch/patio, and replace a cement patio for \$12,400, including materials and labor. M.L. and S.L. paid Respondent \$6,450 as a downpayment. Respondent replaced the concrete patio but did not grade the finish so that water would drain away from the house, causing water to pool against the house when it rains. In addition, Respondent failed to clean the concrete that Respondent splattered on the house and garage when installing the patio. Respondent failed to pay for delivery of the concrete, and M.L. and S.L. paid the concrete company an additional \$884.72 for the concrete. Respondent worked sporadically on tearing off the old roof but failed to complete the job and failed to order the supplies needed for the metal roof. Respondent failed to return to the work site, and M.L. and S.L. have been unable to contact Respondent regarding a partial refund of their downpayment to Respondent.

CONCLUSIONS OF LAW

1. As a registered contractor in the State of Idaho, Respondent is subject to the jurisdiction of the Board and to the provisions of title 54, chapter 52, Idaho Code.

2. The Complaint was sent to Respondent at the most recent known addresses for Respondent. Respondent was duly and lawfully given notice of proceedings against his registration pursuant to the provisions of IDAPA 04.11.01.055.

3. Respondent's failure to plead or otherwise defend in this action authorizes the Board, pursuant to Idaho Code § 67-5242(4) and IDAPA 04.11.01.700, to enter an Order of Default which is as lawful as if all the allegations in the Complaint were proved or admitted at a hearing.

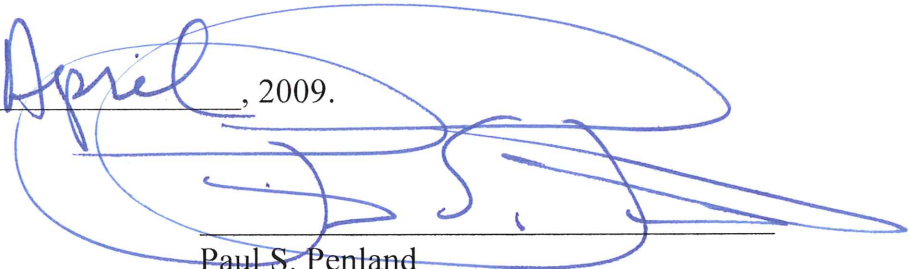
4. Respondent's acts as described in the Complaint constitute grounds for

discipline against Respondent's registration to practice contracting under the laws governing the practice of contracting in the State of Idaho, specifically Idaho Code §§ 54-5215(2)(g) (contractors shall not engage in conduct which constitutes dishonest or dishonorable dealings) and 54-5215(2)(h) (contractors shall not fail to meet the generally accepted standard of care in the practice of construction).

ORDER

Based upon the foregoing, it is the recommendation of the Hearing Officer that the Board take such action as it deems appropriate consistent with the Findings of Fact and Conclusions of Law stated above.

DATED this 17th day of April, 2009.



Paul S. Penland
Hearing Officer

NOTICE OF DUE PROCESS RIGHTS

This is a recommended order of the Hearing Officer. It will not become final without action of the Board. Any party may file a petition for reconsideration of this recommended order with the Hearing Officer issuing the order within fourteen (14) days of the service date of this order. The Hearing Officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. *See* Idaho Code § 67-5243(3).

Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding.

Written briefs in support of or taking exceptions to the recommended order shall be filed with the Board. Opposing parties shall have twenty-one (21) days to respond. The Board may schedule oral argument in the matter before issuing a final order. The Board will issue a final order within fifty-six (56) days of receipt of the written briefs or

oral argument, whichever is later, unless waived by the parties and for good cause shown. The Board may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order.

CERTIFICATE OF SERVICE

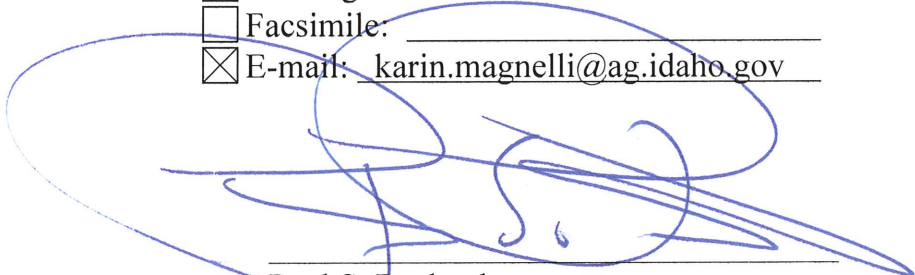
I HEREBY CERTIFY that on this 17th day of April, 2009, I caused to be served a true and correct copy of the foregoing by the following method to:

Manuel T. Lovato
197 Washington Street South
Twin Falls, ID 83301

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____

Karin Magnelli
Deputy Attorney General
P.O. Box 83720
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: _____
- ☒ E-mail: karin.magnelli@ag.idaho.gov



Paul S. Penland
Hearing Officer